The result may be largely to vitiate the object of the legislature. An executor remains an executor indefinitely, even though he be also nominated under the will to be a trustee of trusts created by that will. A dishonest person who is both executor and trustee under the will, by falsely alleging to an innocent purchaser that he is selling *qua* executor, may therefore be enabled, at any rate during a period of six years after the testator's death, to sell all the trust property and to pocket the proceeds unimpeded by any necessity of abetment by a second trustee.

That, however, is the law as I understand it.

In the present case I was informed that the purchaser was satisfied that the sale was in fact being made in order to provide for the payment of funeral and testamentary expenses and debts.

I therefore make the declarations and the order as to costs prayed for by the vendor.

Order accordingly.

Solicitors: *Wee Swee Teow & Co.; Braddell Bros.*

IN THE MATTER OF RICHARD CHUAN HOE LIM

[O.C.J. (Adrian Clark J.) October 20, 1936]
[Singapore Admission of Advocates and Solicitors No. 2 of 1936]

Advocates and Solicitors Ordinance (Cap. 62), s.5, sub-s.5.

Applications to shorten period of posting of notices and to shorten period during which petitioner is required to attend and receive instruction in a practitioner's office in the Colony. Active practice in any part of His Majesty's dominions may be a special ground in shortening or even dispensing with these periods. Observations on special grounds.

PETITION.

Laycock for the petitioner.

Worley (Solicitor-General) for the Attorney-General.

Withers Payne for the Singapore and Penang Bar Committees.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Adrian Clark J.: This petition under the Advocates and Solicitors Ordinance prays the Court to—

(1) shorten the period during which the notice referred to in subsection 2 of section 5 of the Advocates and Solicitors Ordinance is required to be posted;

(2) shorten the period during which the petitioner is required to attend and receive instruction in law in an office in the Colony of a practising advocate and solicitor of not less than seven years' standing in the Colony; and

(3) admit and enrol the petitioner forthwith as an advocate and solicitor of this Honourable Court.

The first two prayers can only be acceded to under section 5(5) of the Ordinance, that is to say "on special grounds."

The special grounds in this case are said to be two, namely that the petitioner has been in active practice as a barrister in Hong Kong for the past five years and also that the firm with which he is now working will, if he is not immediately admitted, find it almost impossible to cope with its work, since one of the partners in that firm is about to go to England on long leave.

The petition is opposed by the Bar Committees of Singapore and of Penang both of whom have been represented in these proceedings by Dr. Withers Payne.

Dr. Withers Payne first cited the case of *Re Niblett*, S.L.R. (N.S.) 58 which is referred to at p. 72 of Van Someren but that case was decided at a time when the subsection corresponding to what is now section 5(5) was differently worded. The Legislature has since then intimated, in an amendment to that subsection, that active practice in any part of His Majesty's dominions may be a special ground justifying this Court in shortening or even in dispensing with the periods of time referred to in subsections (2) and (3) of section 5.

I do, however, agree that the mere fact that a partner in a firm has elected to go on leave at some particular time cannot of itself be good ground for dispensing with the requirements of the section.

The main objection of the Bar Committee is that the petitioner has not had sufficient time in which to gain local experience and, especially, experience in those aspects of legal work with which the petitioner's previous practice has not familiarised him. In the present case the petitioner had, until his arrival in this Colony, practised purely as a barrister and had also had no experience of conveyancing.

This Court should always, I think, without abdicating its own functions as final arbiter in the matter, pay great attention to any objection raised by a Bar Committee since such an objection may be assumed to be based on the experi- [269] ence of its members of what is desirable in the interests of the public and of the legal profession; and, in this case the Bar Committee are unanimous in their objection. It is true that the committee appointed under section 7 of the Ordinance have certified that the petitioner "has an adequate knowledge of the practice and etiquette of the profession and of the English language and is a suitable person for admission." The existence of this certificate on the record at first gave me pause. I cannot accept the suggestion of the learned Solicitor-General that the primary object of the interview required under this section is to ascertain whether the petitioner has sufficient command of the English tongue; I must assume that the Legislature meant what it has said, and the requirement that the petitioner should have "an adequate knowledge of the practice and etiquette of the profession" is a requirement which goes very much further; while the further requirement that he should be "a suitable person for admission" must mean that the candidate should, at the moment the certificate is signed, be in every way a fit and proper person to practise in this Colony as an advocate and solicitor of this Court. I do not think that, in future, the committee appointed under section 7 of the Ordinance should give an unqualified certificate if, in their opinion, a candidate requires further local experience before he undertakes the responsibility of advising or otherwise acting professionally for clients, for reward, as an officer of this Court.

[269]

Dr. Withers Payne has, however, pointed out that the two advocates and solicitors appointed by "the local Bar Committee" under section 7 are not necessarily members of that local Bar Committee; that their opinion should not be held to bind the Bar Committee on all points; and that the final opinion of the Bar Committee cannot always be formed until all the necessary papers in the matter have been filed, which may not be until after the interview under section 7 has taken place. Moreover there is no provision under the section which allows the Bar Committee to disagree with or to comment on a favourable report made by the interviewing committee and, in any case, such a report could not in this case bind the Penang Bar Committee which also offers opposition to the petition.

At most, therefore, the certificate under section 7 can be taken to be evidence corroborating Mr. Mallal's affidavit (which I should however accept without any corroboration) that the petitioner would in fact be fitted to enter immediately upon the practice of his profession as an advocate and solicitor of this Court, if the requirements of the Ordinance did not exist.

Dr. Withers Payne has submitted that there is insufficient evidence that the petitioner has been engaged in the "active" practice of his profession in Hong Kong. I do not agree. The Chief Justice of Hong Kong has certified this in so many words and, if corroboration could be required of evidence coming from such a source, it is to be found in the certificate of the Acting Chief Justice of that Colony (which Mr. Laycock produced but had not thought it necessary to put on the file) and in that of the Registrar of the Supreme Court of that Colony. The last named certificate, however, if I may venture to say so, goes too far in certifying that the candidate is "a fit and proper person to be exempt from the provisions of section 5(3) of the Advocates and Solicitors Ordinance, Straits Settlements." That, I think, is a matter on which only this Court should express an opinion.

I agree with the submission that the general principle underlying the requirements of section 5 of the Ordinance is that persons admitted to practise the law in this Colony should not only have the necessary academic qualifications but should also have practical experience fitting them to deal with every kind of legal work with which an advocate and solicitor of this Court has the right to deal and with which he holds himself out to the public, by the fact of his admission, as being professionally competent to deal.

Without wishing to lay down any hard and fast rule which might bind me on future occasions I think that when a candidate lacks experience of any branch of such work, he should usually be required to gain such experience in the office of an advocate and solicitor of this Colony for a period of at least six months, in order to meet the requirements which the Legislature thought it necessary to impose.

The petitioner in this case has never "read in Chambers" in England but he has had experience which is ample and far greater than that which could be obtained by six months "reading in Chambers," of those branches of law in which a barrister in England is usually engaged with the important exception that he has undertaken no conveyancing work. Of the work done in England exclusively by the solicitor branch of the profession he has had no experience prior to his arrival in this Colony and now his experience has consisted of a study of those branches, and of conveyancing, which, while no doubt intensive and undertaken under expert supervision, has only extended to four months.

I do not think that his considerable experience of advocacy in Hong Kong should be held to excuse him from underoging the usual period of local instruction in conveyancing and in certain [270] aspects of a solicitor's work which the Legislature has considered to be normally a minimum. [270]

Dr. Withers Payne has suggested that this petition should be dismissed. I see no reason to go so far, nor to put the petitioner to unnecessary trouble and expense in filing a fresh petition. The prayers in the petition are distinct and can be dealt with separately.

The prayer that this Court should shorten the period during which the petitioner is required to attend and receive instruction in law in an office in the Colony of a practising advocate and solicitor of not less than seven years' standing in the Colony will be granted to the extent that that period will be shortened to one of six months; the prayer that he period referred to in section 5(2) should be shortened will then become unnecessary. The remaining prayer in the petition, namely that the petitioner should be admitted and enrolled, will be adjourned generally and may be brought on for hearing again in due course by the petitioner subject to his giving notice of such further hearing to the persons named in section 6(4) of the Ordinance.

There is no reason why, in the meanwhile, an application under section 35 of the Ordinance should not be filed in respect of the petitioner.

Some inconvenience has been caused in the present case through the Court and the petitioner being unaware that any opposition would be offered to the petition by the bar committees. A bar committee has a right to be heard on such a petition and action under section 6(5) is, in its case, therefore not essential. The Ordinance contains no provision requiring a bar committee to give notice of its intention to oppose. Dr. Withers Payne has informed me that it is the usual practice (not followed in this case) for a petitioner to ask the bar committees by letter whether or not they intend to oppose and then to file a copy of the replies received with his affidavit. This appears to be a suitable method but in any case, I suggest that it would be convenient if some practice in this respect were agreed and, once agreed were invariably complied with in the future.

Order accordingly.

Solicitors: *John Laycock; C. H. Withers Payne.*